

GOVERNOR'S VETO MESSAGE OF HB NO. 796

Pursuant to the provisions of the Constitution, I am filing in the office of the Secretary of State, without my approval, HB No. 796 passed at the recently adjourned Regular Session of the 47th Legislature, together with my objections as herein set forth.

My objections to this bill, which contains provisions which I should be glad to approve on their own merits with some other proposed changes in existing laws, as to the desirability of which I am in doubt, is based upon the fact that in Section I this bill reiterates and substantially re-enacts the present statutory definition of the open saloon as follows:

"The term Open Saloon as used in this Act means any place where any alcoholic beverage whatever, manufactured in whole or in part by means of the process of distillation, or any liquor composed or compounded in part of distilled spirits, is sold or offered for sale for beverage purposes or in broken or unsealed containers, or any place where any such liquors are sold or offered for sale for human consumption on the premises where sold."

I cannot bring myself to approve or acquiesce either in the desirability or constitutionality of this definition of the open saloon, which has the effect of legalizing the existing beer and wine saloons in Texas for the following reasons:

It seems obvious to me that such legislation is clearly unconstitutional; - that the Legislature is without the constitutional power to legalize by license any kind of open saloon, selling any kind of intoxicating liquor, however produced, to be drunk on the premises where sold.

Section 19, of Article 16 of the Constitution of Texas, which, as Governor, I am sworn to support, adopted by vote of the people on August 24, 1935, provides in Paragraph (a) as follows:

"The open saloon shall be and is hereby prohibited. The Legislature shall have the power, and it shall be its duty to define the term 'Open Saloon' and enact laws against such."

It does not take a lawyer to understand the meaning of these plain words. They bar all open saloons from Texas soil, - beer saloons, or wine saloons, as well as whiskey saloons.

But, we are told that the Constitutional provision I have quoted gives to the Legislature the power to "define" the open saloon, and that this carries with it the power to legalize beer and wine saloons and to license them. If this argument is sound then the Legislature has the undoubted power to define open saloon as a place where intoxicating liquors other than those produced by distillation are sold, to be drunk on the premises. Undeniably if the Legislature has the power under the Constitution by definition to legalize beer and wine saloons, it has the power by definition to legalize distilled liquor saloons.

Besides, if the Constitution does confer upon the Legislature the power to legalize beer and wine saloons by definition, certainly such power ought never to have been exercised, and the existing statute legalizing beer and wine saloons ought not to be re-enacted and endorsed by the Legislature and the approval of the Governor. It ought to be repealed.

I am unwilling by my approval of this bill, to give endorsement or sanction to the construction of the Constitution necessary to render valid the existing law or its proposed amendments insofar as it legalizes the operation and licensing of beer and wine saloons, of any place, under any name, where intoxicating liquors of any kind, however produced, are sold to be drunk on or about the premises where sold.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the Seal of State to be impressed hereon at Austin, this the 21st day of July, A. D., 1941.

W. Lee O'Daniel

Governor of Texas

Wm. J. Lawson
Secretary of State